

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LOIS A. HENDERSON</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 227,132 & 253,056
<b>KEY INDUSTRIES</b>	)	
Respondent	)	
AND	)	
	)	
<b>AMERICAN INSURANCE COMPANY,</b>	)	
<b>FIREMAN'S FUND INSURANCE COMPANY and</b>	)	
<b>COMMERCIAL COMPENSATION INS. CO.</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent and its insurance carrier, Fireman's Fund Insurance Company, appeal Administrative Law Judge Steven J. Howard's October 9, 2000, Order.

**APPEARANCES**

Claimant appeared by her attorney, Carlton W. Kennard of Pittsburg, Kansas. Respondent and its insurance carrier, Fireman's Fund Insurance Company, appeared by their attorney, Frederick J. Greenbaum of Kansas City, Kansas. Respondent appeared individually by its attorney, Ronald J. Laskowski of Topeka, Kansas. American Insurance Company is listed in the caption of the case and is identified in the transcript of the hearing as being represented also by Frederick J. Greenbaum.

Commercial Compensation Insurance Company of Overland Park, Kansas, did not appear.

**RECORD AND STIPULATIONS**

The record consists of the August 5, 1999, Settlement Hearing transcript held in Docket No. 227,132 and the October 5, 2000, Post-Award Hearing transcript and medical records admitted into evidence and attached to the transcript.

**ISSUES**

Docket No. 227,132 with a March 26, 1997 accident date and Docket No. 253,056 with a February 7, 2000 accident date were consolidated by the Administrative Law Judge for purposes of the October 5, 2000 hearing.

In Docket No. 227,132, on March 26, 1997, claimant injured her low back while working for the respondent. This claim was settled in a Settlement Hearing held before a Special Administrative Law Judge on August 5, 1999. The Special Administrative Law Judge approved a compromise settlement award for a 17.5 percent permanent partial general disability. Claimant retained the right to future medical treatment and review and modification of the award upon application and approval of the Director.

Docket No. 253,056 is a new claim for an alleged injury to claimant's low back on or about February 7, 2000, while working for the respondent. The insurance carrier is Commercial Compensation Insurance Company (Commercial).

The Administrative Law Judge granted claimant's request for temporary total disability benefits commencing February 15, 2000 and authorized Dr. Randal Hendricks to treat claimant's low back injury. The Administrative Law Judge's Order was identified with both docket numbers. The Administrative Law Judge assessed the costs of the hearing against Commercial.

The attorney representing Fireman's Fund Insurance Company (Fireman's), the insurance company that had coverage in Docket No. 227,132, filed the Request for Board Review identifying only Docket No. 227,132 with the March 26, 1997 accident date. The issue requested for Appeals Board review was stated as follows:

"Whether the Administrative Law Judge exceeded his authority in granting temporary total disability benefits. Claimant did not meet with personal injury by accident during our client's coverage period."

No briefs were filed by any of the parties. Therefore, the Appeals Board does not have the benefit of any arguments or contentions of any of the parties subject to this Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, the Appeals Board makes the following findings and conclusions:

The Administrative Law Judge's Order does not identify in which docket number the Order is entered. The Order identifies both docket numbers. But, since the costs of the proceedings were assessed against the respondent and its insurance carrier Commercial, one would assume the Administrative Law Judge intended the respondent and its

insurance carrier Commercial to also be responsible for the payment of the temporary total disability benefits and medical treatment ordered provided for the claimant's low back injury.

In the discussion between the parties and the Administrative Law Judge, preceding the testimony of the claimant contained in the transcript of the October 5, 2000 hearing, Mr. Laskowski, who was representing the respondent individually, notified the Administrative Law Judge that Commercial was the insurance carrier that had the workers compensation insurance coverage for the February 7, 2000 accident date. Mr. Laskowski also announced that Commercial was insolvent and apparently no longer in existence and the respondent had not ascertained if there was a guaranty fund or some other entity to provide coverage for this claim.

At that time, the Administrative Law Judge had an off-the-record discussion with the parties. After such discussion, the Administrative Law Judge stated on the record:

"It would appear that there is something in place to resolve any orders that are entered. In the event a problem arises, the parties are notified to contact me and let me know the status."

There are other confusing problems with this case. First, Docket No. 227,132 with the March 26, 1997, accident date occurred while Fireman's had coverage. The parties stipulated that Fireman's coverage ended on July 1, 1998. American Insurance Company is also listed in the caption. However, as shown in the October 5, 2000 hearing transcript, it also appeared by the attorney for Fireman's who filed the request for review.

The Application for Hearing was filed in Docket No. 227,132 on July 19, 2000, as a request for post-award medical treatment. Accordingly, the October 9, 2000, Order, if it is entered in that particular docket number, is a final order and not a preliminary hearing order.<sup>1</sup> But if the subject order was entered in Docket No. 253,056, it is a preliminary hearing order and the Appeals Board's jurisdiction to it review is limited. The issue raised by the respondent and its insurance carrier in its request for review is an issue that involves date of accident in order to determine insurance coverage. That is not an issue the Appeals Board has jurisdiction to review from a preliminary hearing order.<sup>2</sup>

The Appeals Board, however, based on the information contained in the record to date, concludes since the Administrative Law Judge assessed the costs against respondent and its insurance carrier, Commercial, with coverage for the February 7, 2000 accident date, although announced to be insolvent, the October 9, 2000 Order was entered

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<sup>1</sup> See, K.S.A. 44-510k(a).

<sup>2</sup> See, K.S.A. 44-534a.

in Docket No. 253,056 and is a preliminary hearing Order. As found above, the Appeals Board does not have jurisdiction to review this preliminary finding. Thus, the respondent and its insurance carrier's appeal is dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the October 9, 2000, Order is a preliminary hearing Order and the Appeals Board does not have jurisdiction to review and the appeal should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS  
Frederick J. Greenbaum, Kansas City, KS  
Ronald J. Laskowski, Topeka, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director